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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

USA Commercial Mortgage Company,

Debtor.

Case No. BK-S-06-10725-LBR
Chapter 11

**USACM Liquidating Trust's
Motion to Authorize Interim
Distribution To Certain Large
Allowed Claims**

Hearing Date: OST Requested
Time: OST Requested

Geoffrey L. Berman, Trustee for the USACM Liquidating Trust (the "Trust"),
respectfully moves this Court for an order:

- Approving an interim distribution of a *pro rata* share of \$8 million to the following claimants, and reserving the balance of the distribution for all other claimants.

Claim No.	Claimant	Total Allowed
10725-02578	USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC ("DTDF")	\$128,000,000.00
10725-01099	BUNCH, DEL & ERNESTINE	11,358,662.28
10725-02579	USA CAPITAL FIRST TRUST DEED FUND, LLC [assigned to DTDF under the Plan]	7,000,000.00



Claim No.	Claimant	Total Allowed
10725-01687	HOMFELD II LLC	2,191,765.92
10725-01660	KEHL, ROBERT J & RUTH ANN	1,501,590.59
10725-01740	LARRY L. & PATSY R RIEGER REVOCABLE TRT DTD 8/14/91	1,467,156.00
10725-00784-2	BINFORD MEDICAL DEVELOPERS LLC	1,425,000.00
10725-01279	LERIN HILLS LTD	1,200,000.00
10725-00097	TERRA LAW LLP, IN TRUST FOR ALBERT LEE et. al.	1,000,000.00
10725-00794-3	PENSION BENEFIT GUARANTY CORPORATION	1,000,000.00
	Total	\$156,144,174.79

- Approving the Trustee to provide notice of this motion as detailed below;¹
and
- Authorizing the Trustee additional authority as may be necessary to make the approved interim distribution.

This motion is explained in the following Memorandum and is supported by the Court's record, the Declaration of Geoffrey L. Berman in Support of Distribution Motion and the record to be developed at any hearing on this motion.

MEMORANDUM OF POINTS AND AUTHORITIES

Plan Confirmation and the Trust

This Court confirmed the Third Amended Plan of Reorganization on January 8, 2007.² The Plan established the USACM Trust, which incorporated the USACM Trust

¹ All capitalized terms not defined herein are given the meaning ascribed to them in the Plan, including the Plan's supplemental documents.

² Order Confirming the "Debtors' Third Amended Joint Chapter 11 Plan of Reorganization" as Modified Herein [DE 2376].



1 Agreement by reference.³ Geoffrey L. Berman was confirmed as trustee. The Trust has
 2 filed quarterly post-confirmation reports with the Court, which are publicly available on
 3 the Trust's website.⁴

4 Under the terms of the Plan, USACM Class A-4 creditors (the General Unsecured
 5 Claimants) were made beneficiaries of the USACM Trust. As Beneficiaries, the General
 6 Unsecured Claimants are entitled to periodic, pro rata distributions from the Trust Assets.

7 **Claims Resolution and First Distribution**

8 The deadline set pursuant to the Plan for the Trust to object to claims has expired.

9 As this Court is aware, the Trust has been working through all scheduled and filed
 10 claims to determine the Allowed and Disallowed Claims. Presently, approximately \$202
 11 million in claims have been allowed; \$772 million in claims have been disallowed; and
 12 about \$8 million in claims are still pending resolution.

13 The Trust filed its Motion for an order authorizing the Trust's initial interim
 14 distribution to allowed beneficiaries,⁵ which motion was granted by the Court. The Trust
 15 released the interim distribution in November 2009. That distribution equaled 4.92% of
 16 the allowed creditor claims. Reserves for unresolved and/or disputed claims were
 17 established pursuant to the Trust's motion and the Court Order approving the Motion.

18 The Trustee has resolved certain large claims, and those claims in excess of \$1
 19 million are listed above. The Trust continues to work through the remaining unresolved
 20 claims, and is confident that the balance of unresolved claims is less than \$10 million.

21 The Trust has filed objections and motions that have been scheduled for hearing on
 22 the December 19, 2011 omnibus hearing calendar. Some orders remain to be submitted
 23 from the more recent omnibus hearing on November 15, 2011.

24 ³ See Debtors' Third Amended Joint Chapter 11 Plan Of Reorganization ("Plan")
 25 [DE 1799] §§ I(C), IV(D)(1), VII.

26 ⁴ <http://usacmcucc.bmcgroup.com/Trustees%20Quarterly%20Reports/Forms/AllItems.aspx>

⁵ Motion to Authorize First Interim Distribution to Unsecured Creditors [DE 7486].



Proposed Distribution and Reserves

The Trustee is entitled to make a distribution whenever the Trustee, in his discretion, believes the USACM Trust has cash in an amount sufficient to make a distribution while leaving enough left over in the Trust to fund its operations.⁶ With respect to distributions and reserves, the confirmed Plan provides in part:

Prior to making any distribution on Allowed Claims and Equity Interests, the {Trust} shall establish a Cash reserve for each Disputed Claim and Equity Interest, including unclassified Claims. Except as provided below, the Cash reserve for a Disputed Claim or Equity Interest shall be equal {to} the amount set forth in the proof of Claim or Equity Interest, or if no proof of Claim or Equity Interest has been Filed, the amount set forth for the Claim or Equity Interest on the Schedules.⁷

Although the next paragraph of the Plan authorizes the Trustee to seek this Court's permission to reserve for Disputed Claims in some other amount, the Trustee does not seek that authority now.

By way of general background, the Trustee files Quarterly Reports, recently filed his Quarterly Report for the period ending September 2011.⁸ After reserving in order to "provide for all expense reserves necessary for the USACM Trust,"⁹ the Trustee believes that \$8 million in cash should be distributed to Beneficiaries at this time. The Trustee believes that the amount of Trust assets leaves the Trust with appropriate reserves.

If the Trustee were to make an interim distribution to all of the thousands of allowed claimants now, the Trust would spend a significant sum processing numerous relatively small checks. Conversely, if the next interim distribution to allowed claims includes the claims set for resolution at the upcoming calendars, creditors can receive a

⁶ USACM Trust Agreement § 3.5(d)(iv).

⁷ Plan § VII(B)(2).

⁸ DE 9544.

⁹ Plan § IV(D)(1).



1 distribution in perhaps the first quarter of 2012 without the Trust incurring unnecessary
2 administrative expense.

3 To the extent that the Court authorizes the interim distribution to the large
4 claimants described in this motion, and the Trust makes that distribution, then when the
5 Trust seeks leave early next year to make the same distribution to all other allowed
6 unsecured claims, the large claimants would not receive another payment.

7 **Notice**

8 The Trust will provide notice of this motion as follows.

- 9 • Notice via the Court's ECF system;
- 10 • Service of this motion and the notice of hearing by email or mail to the
11 parties on the post-confirmation limited service list;
- 12 • Service of this motion and notice by first class mail to each claimant listed
13 above.
- 14 • Posting the motion on the Trust's website -
15 <http://usacmcucc.bmcgroup.com/default.aspx>.
- 16 • Any additional notice as directed by the Court.

17 Specifically, the Trust does not intend to provide master mailing list notice of this
18 motion.

19 **Request For Relief**

20 The Trustee respectfully requests that this Court enter an order:

- 21 • Approving the notice of this motion;
- 22 • Authorizing the Trustee to make an interim distribution of \$8 million in
23 Trust funds to the Trust's Beneficiaries and unsecured creditors;
- 24 • Authorizing the Trustee additional authority as may be necessary to make
25 the approved interim distribution; and
- 26 • Such other relief as is proper.

By: Robert M. Charles, Jr. (NV 6593)
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